

Message Text

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PAGE 01 STATE 151161
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TO USMISSION GENEVA IMMEDIATE

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FOR SCHWEBEL

E.O. 11652: N/A

TAGS: ETRD

SUBJECT:MFN: INTERNATIONAL LAW COMMISSION

REF: GENEVA 08914

1. CONCERNING REUTERS PROPOSAL WITH REGARD TO AGREEMENTS
CONFORMING WITH CERDS, WE AGREE THAT CERDS SHOULD NOT BE
ACCORDED THIS STATUS IN INTERNATIONAL LAW. IN ADDITION TO
THIS OBJECTION IN LEGAL PRINCIPLE, WE SEE NO MERIT IN FUR-
THER UNDERMINING THE MEANING AND BENEFITS OF MFN AS AN
ECONOMIC PRINCIPLE.

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PAGE 02 STATE 151161

2. AS TO REUTERS COMMODITY AGREEMENT PROPOSAL FOLLOWING
BACKGROUND MAY BE HELPFUL. WE DO RECOGNIZE THAT COMMODITY
AGREEMENTS CAN AND DO PROVIDE FOR DISCRIMINATION AGAINST
NON-PARTY STATES OTHERWISE ENTITLED TO MFN FROM PARTIES.
FOR EXAMPLE, BOTH COFFEE AND SUGAR AGREEMENTS PROVIDE THAT
IMPORTING MEMBERS MUST LIMIT DRASTICALLY THEIR COFFEE/SUGAR

IMPORTS FROM STATES NOT PARTY TO THOSE AGREEMENTS. GATT RECOGNIZES (ARTICLE 20(H)) COMMODITY AGREEMENTS SUBMITTED TO GATT PARTIES AND NOT DISAPPROVED BY THEM AS AN EXCEPTION TO GATT OBLIGATIONS. CURIOUSLY, NO COMMODITY AGREEMENT, TO OUR KNOWLEDGE, HAS EVER BEEN SUBMITTED. HOWEVER, NOTWITHSTANDING DISCRIMINATION IN THESE AGREEMENTS, NO GATT

PARTY HAS EVER COMPLAINED, NOR ARE WE AWARE OF ANY COMPLAINTS UNDER FCN TREATIES.

3. REUTERS PROPOSAL ON COMMODITY AGREEMENTS WOULD BOTH BROADEN THE GATT EXCEPTION, BY ELIMINATING ANY STANDARDS (EXCEPT OPEN MEMBERSHIP) AND POTENTIAL FOR REVIEW, AND NARROW THE EXCEPTION, BY REQUIRING THAT COMMODITY AGREEMENT BE CONCLUDED "UNDER AUSPICES" OF UN OR UN BODY (E.G. UNCTAD). THOUGH OPPORTUNITY FOR REVIEW AND EXAMINATION IN GATT HAS NOT BEEN EXERCISED IN THE PAST, WE ARE RELUCTANT TO SEE THIS POSSIBILITY DISAPPEAR. WE ARE CONCERNED, FOR EXAMPLE, THAT PRODUCER CARTELS COULD PASS MUSTER UNDER REUTERS PROPOSAL MERELY BY BEING CONCLUDED UNDER UNCTAD AND LEFT OPEN TO MEMBERSHIP BY IMPORTERS, THOUGH IMPORTERS WOULD HAVE NO INFLUENCE IN THE "COMMODITY AGREEMENT". AS TO REQUIRING SPONSORSHIP BY UN OR UN BODY, WE ARE NOT CERTAIN WHAT "UNDER THE AUSPICES" MEANS, I.E. WOULD THE COFFEE AGREEMENT QUALIFY, WHOSE ONLY CONNECTION WITH UN IS THAT U.N. SECRETARY GENERAL IS THE LIMITED OFFICIAL USE

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PAGE 03 STATE 151161

DISPOSITARY? THESE ARE DIFFICULT ISSUES, UNDER DEBATE IN MANY GENERAL AND SPECIFIC FORUMS, AND WE QUESTION ANY SATISFACTORY RESOLUTION COULD BE ACHIEVED IN ILC. WE BELIEVE, THEREFORE, THAT COMMODITY AGREEMENT EXCEPTION COULD BETTER BE LEFT TO INDIVIDUAL AGREEMENTS SUCH AS GATT.

4. AS TO VALLAT PROPOSAL, THIS TOO IS FRAUGHT WITH PERILS, IN THE ABSENCE OF STANDARDS AS TO WHAT IS A CUSTOMS UNION. U.S. HAS HAD INNUMERABLE ARGUMENTS, WITH THE EC AND OTHERS, AS TO WHAT MEETS THE CRITERIA FOR CUSTOMS UNION. ARTICLE 24 OF THE GATT WHICH DEALS WITH CUSTOMS UNIONS AND FREE TRADE AREAS HAS BEEN A FREQUENT SOURCE OF CONTENTION. IT IS ONLY TOO EASY FOR A GROUP OF STATES TO AGREE TO ACCORD EACH OTHER PREFERENCES ON SOME PRODUCTS, RAISE BARRIERS TO THIRD PARTIES, AND CALL THEMSELVES A CUSTOMS UNION OR FREE TRADE AREA. SUCH ARRANGEMENTS OBVIOUSLY CAN SERIOUSLY UNDERMINE NORMAL MFN BENEFITS. ELEVATION OF CUSTOMS UNION EXCEPTION TO A GENERAL PRINCIPLE OF INTERNATIONAL LAW IN DEFINING MFN COULD, IN OUR VIEW, EXACERBATE THESE DIFFICULTIES. WE BELIEVE ANY SUCH EXCEPTION SHOULD BE DEALT WITH IN

SPECIAL CLAUSES IN MFN AGREEMENTS.

5. YOU MAY WISH TO DISCUSS THESE ISSUES WITH JOHN
GREENWALD, WHO IS AT MTN MISSION, GENEVA, UNTIL FRIDAY.
CHRISTOPHER

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